
(2006) 08 GAU CK 0027
In the Gauhati High Court

Commissioner of Income Tax

APPELLANT

Vs

K.U. Ltd.

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2008) 296 ITR 233

Hon'ble Judges : T. Nandakumar Singh, J;D. Biswas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. U. Bhuyan, learned Counsel for the petitioner.

2. The appeal is admitted for hearing on the following question:

Whether, on the facts and in the circumstances of the case, is not the decision of the Tribunal perverse in deciding the case against the Revenue ignoring the fact that the assessee had adopted the colourable device evidenced by his conduct of incurring heavy losses from year to year in share transaction to avoid the payment of due tax?

3. None appears for the respondent though the notice has been duly served as per office record.

4. This appeal has been preferred by the Revenue u/s 260A of the Income Tax Act, 1961, challenging the order dated May 20, 2001, passed by the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati, in I.T.A. No. 30 (Gauhati) of 1998 relating to the assessment year 1994-95. Shorn of factual details, we would like to straight way answer the question relying upon a judgment of a Division Bench of this Court in Commissioner of Income Tax Vs. Janki Textiles and Industries Ltd. and Others, An identical question was dealt with by this Court in the aforesaid case. In that judgment the assessee was investment company and their main source of income was from interest. The assessee-company during the

assessment years showed loss on account of certain share transactions and claimed deduction on account of that loss from total income. The claim was repudiated by the Assessing Officer. On appeal, the Commissioner of Income Tax (Appeals) came to the conclusion that the assessee suffered loss on account of share transactions and, therefore, was entitled to the deductions. The Revenue went on appeal and the learned Tribunal also concurred with the decision of the Commissioner of Income Tax. Being aggrieved by the order of the learned Tribunal, the Revenue approached this Court and the court on the factual matrix as indicated above was of the view that the decision of the Commissioner of Income Tax (Appeals) as well as the learned Tribunal in allowing deduction on account of loss sustained due to share transactions is just and proper.

5. The factual matrix of the case at hand is also identical in the sense that the assessee in this appeal is also an investment company. During the assessment year 1994-95, the assessee disclosed an interest income of Rs. 10,91,708 and the said income was adjusted by adjusting against the loss in share trading amounting to Rs. 13,85,049. Both the Commissioner of Income Tax (Appeals) and the learned Tribunal rendered concurrent findings after evaluation of the materials on record. This Court in an appeal u/s 260A is not required to re-appreciate the evidence on record and review the concurrent findings of the Commissioner of Income Tax (Appeals) as well as the learned Tribunal on facts. Therefore, having regard to the decision in Commissioner of Income Tax Vs. Janki Textiles and Industries Ltd. and Others, we are inclined to answer the question in favour of the assessee and against the Revenue. The appeal is accordingly dismissed.